TING AI CHOON

v.

LOH NGO CHUO & ORS

HIGH COURT SABAH & SARAWAK, SIBU
RAVINTHRAN PARAMAGURU JC
[ORIGINATING SUMMONS NO: 24-38-2007]
23 SEPTEMBER 2009

CIVIL PROCEDURE: *Locus standi - Notice of originating summons - Whether proposed respondents have locus standi to be served with notice - Ex parte application by wife to manage husband's affairs and properties - Whether alleged common law wife and alleged children have locus standi - Whether ex parte order obtained without notice to proposed respondents irregular*

FAMILY LAW: *Marriage - Wife - Whether there was marriage within meaning of Law Reform (Marriage and Divorce) Act 1976 - Whether proposed respondent a common law wife - Whether living together for 20 years constituted marriage*

MENTAL HEALTH: *Property and affairs of patient - Management of - Patient, persons who are - Power of judge to make orders under s. 11 Mental Health Ordinance 1961 (Sarawak) - Whether subject to magistrate's order under s. 5 - Whether s. 11(3)(b) independent of s. 11(3)(a) - Whether ex parte interim order obtained by wife to manage husband's affairs and properties valid*

MENTAL HEALTH: *Property and affairs of patient - Management of - Persons for whom patient might be expected to provide if he were not mentally disordered - Mental Health Ordinance 1961 (Sarawak), para. 1(c) of Schedule - Application for maintenance*

STATUTORY INTERPRETATION: *Construction of statutes - Conjunctive or disjunctive - 'and' - Usually conjunctive in ordinary use - Whether can be disjunctive - Depending on context of use - Whether court may read 'and' as 'or' to carry out intention of legislature*

WORDS & PHRASES: *'and' - Conjunctive or disjunctive - Context of use in statute - Mental Health Ordinance 1961 (Sarawak), s. 11(3)(a) & (b) - Whether exercise of power under s. 11(3)(b) independent of s. 11(3)(a) - Whether subject to s. 5*

This was a dispute over the custody and property of one Luk Tai Lik ('Luk'), contested as between with his legal wife ('Ting') and his alleged common law third-wife ('Loh'). Ting has already

obtained an *ex parte* interim order ('the *ex parte* order') to manage Luk's properties and affairs, and the two applications herein before the court were: (i) by Loh and her son ('LTT') jointly (as proposed 1st and 2nd respondents) to set aside the *ex parte* order ('encl 11'); and (ii) by Loh's daughter Luk Thien Sieng ('LTS') (as proposed 3rd respondent) to intervene ('encl 62').

The grounds advanced in support of encl 11 were that: (i) it is the desire of Luk that Ting should not be allowed to care for him; (ii) Ting had deserted Luk 35 years ago and that he has expressed no love for her; and (iii) the joint business, bank accounts and properties of Luk were acquired from the joint efforts of Luk and Loh. The validity of the *ex parte* order obtained under s. 11 Mental Health Ordinance 1961 (Sarawak) ('the Ordinance') was also challenged on the following grounds: (a) non-compliance with s. 5 of the Ordinance; (b) Loh was not given notice of the application for the *ex parte* order; and (c) Loh, LTT and LTS have a legitimate right to be maintained by Luk, having lived with him for 20 years.

Encls 11 and 62 were opposed by Ting of the following grounds: (i) that Loh, not being married to Luk, has no locus standi in the matter; (ii) that Loh is not Luk's common law wife as her two children, LTT and LTS, were fathered by a Singaporean; (iii) that the adoption of LTS by Luk was illegal; (iv) that the original name of LTT was William Tan Wei Keong and that it was illegally changed; and (v) that Luk's signature had been forged so as to appoint LTS as a company director.

Held (dismissing the application to set aside the *ex parte* order):

(1) It was not in dispute that Loh had not contracted a marriage with Luk under the provisions of the Law Reform (Marriage and Divorce) Act 1976 ('the LRA'). Thus, even if Loh had produced - which she had not - evidence of a customary marriage with Luk, such a marriage would not have been a valid one in the face of the LRA and the oral decision of the Federal Court in *Chai Siew Yin v. Leong Wee Shing*. Loh was not Luk's 'wife' and, hence, lacked the *locus standi* to be served with notice of Ting's originating summons. Further, LTT (being a minor) and LTS did not come within the contemplation of an order under s. 11 of the Ordinance which is to manage the properties and affairs of a person of unsound mind. Hence, the *ex parte* order was also not irregular despite the fact that no notice of the originating summons was served on LTT and LTS. (paras 10 & 11)

(2) It was not essential for the *ex parte* order obtained by Ting under s. 11 of the Ordinance to have complied with s. 5 thereof. A judge is clothed with jurisdiction under s. 11 of the Ordinance to make such an order respecting a 'patient' without the necessity of having to have reference to a magistrate's order under s. 5 thereof. This is because s. 11(3)(a) and (b) of the Ordinance are disjunctive although the word 'and' is used to separate them. Although in ordinary use the word 'and' is usually conjunctive, it can be disjunctive depending on the context in which it is used. (paras 16 & 17)

(3) The proposed respondents, Loh, LTT and LTS, are persons for whom Luk "might be expected to provide if he were not mentally disordered". Consequently, as no provision was made for them at the time the *ex parte* order was issued, they should be allowed to be joined as respondents for the sole purpose of applying for maintenance under para. 1(c) of the Schedule to the Ordinance. (para 19)

[Application to set aside ex parte order dismissed; proposed respondents allowed to be added as parties to originating summons for sole purpose of applying for maintenance; proposed respondents be at liberty to apply for maintenance.]

Case(s) referred to:
Chia Kok Siong v. Chong Chee Chai & Anor [2003] 3 CLJ 415 HC ***(refd)***
Chai Siew Yin v. Leong Wee Shing [2004] 1 CLJ 752 CA ***(foll)***
Koh Lai Kiow v. Low Nam Hui [2005] 3 CLJ 139 HC ***(refd)***
Leong Wee Shing v. Chai Siew Yin [2000] 1 CLJ 439 HC ***(refd)***
Yeoh v. Chew [2001] 4 CLJ 631 HC ***(refd)***

Legislation referred to:
Criminal Procedure Code, ss. 227, 287, 291, 295
Law Reform (Marriage and Divorce) Act 1976, ss. 4, 5, 3, 7, 9
Mental Health Ordinance (Sarawak), ss. 3, 4, 5, 10, 11(1), (3)(a), (b)

For the applicant - Tony Hii; M/s Stephen Robert & Wong Advocates
For the proposed 1st & 2nd respondent - Voon Lee Shan; M/s Voon & Co Advocates
For the proposed 3rd respondent - Alex Yeo; M/s YO Leong & Co Advocates

Reported by Gan Peng Chiang

A

JUDGMENT

Ravinthran Paramaguru JC:

Introduction

B **[1]** The two applications (encls. 11 and 62) before me are rather unusual although they are in respect of a custody and property dispute. The subject of this dispute is a wealthy septuagenarian by the name of Luk Tai Lik who is unable to care for himself or manage his financial affairs. It is alleged that Mr. Luk has three
C wives of which two are alleged to be "common law" wives. At the heart of the two applications before me is the fight between his legal wife (Madam Ting Ai Choon) on one side and his alleged third wife (Madam Loh Ngo Chuo) on the other side for the right to manage Mr. Luk's properties and affairs. Madam Ting had already obtained an interim order under the Sarawak Mental Health
D Ordinance to manage Mr. Luk's properties and affairs. Madam Loh has made a joint application with her son to set aside the said order in encl. 11 whereas her daughter has sought to intervene in encl. 62. Further inquiry as ordered by the judge was not done because of the pending applications. Under the scheme of the
E Ordinance, all orders under s. 11 of the Sarawak Mental Health Ordinance are interim measures until the patient has recovered. The alleged second wife has not joined in this tussle as yet. For sake of convenience I shall refer to Madam Ting as the applicant, Madam Loh as the proposed first respondent, her son (Luk Thien Thien
F a.k.a. as Muhammad bin Sulaiman) as the proposed second respondent and her daughter (Luk Thien Sieng) as the proposed third respondent.

Brief Facts

G **[2]** The applicant obtained an *ex parte* order *vide* Kuching High Court Originating Summons No. 24-335-2006 (re-registered as Originating Summons No. 24-38-2007 in Sibu) under s. 11 of the Sarawak Mental Health Ordinance to manage Mr. Luk and his assets on 30 November 2006. The proposed first respondent and her
H son who is stated as a minor in the application have filed encl. 11 which seeks:

(i) to join them as respondents in the originating summons; and

(ii) to set aside the *ex parte* order obtained by the applicant.

I

Issues

[3] The grounds of application of the proposed first respondent and her son are that:

1. It was the desire of Mr. Luk that the applicant should not be allowed to care for him.

2. That the applicant left Mr. Luk 35 years ago and he had expressed no love for her.

3. That the joint business, bank accounts and properties of Mr. Luk were acquired from the joint efforts of Mr. Luk and the proposed first respondent.

[4] The ground of application of the proposed third respondent is that she will be affected by the *ex parte* order granting the right to the applicant to manage Mr. Luk and his properties. All the proposed respondents have raised common issues in respect of the challenge against the validity of the *ex parte* order in their 'combined written submission'. The main issues that they have raised are:

(a) That the *ex parte* order under s. 11 of the Sarawak Mental Health Ordinance is not valid because of non-compliance with s. 5.

(b) That the proposed first respondent as the third wife should have been given notice of the application.

(d) That the proposed first respondent and her two children have a legitimate right to be maintained by Mr. Luk by virtue of having lived with him for 20 years.

(e) That some of the properties affected by the *ex parte* order were jointly acquired.

[5] On the other hand, the applicant has raised the following issues:

(a) That the proposed first respondent has no *locus standi* in the matter as she is not married to Mr. Luk.

(b) That the proposed first respondent is not the common law wife as the two children, namely the proposed second respondent and the proposed third respondent were fathered by a Singaporean during the period she claimed to have lived with Mr. Luk.

(c) That the adoption of the proposed third respondent by Mr. Luk was illegal as it contravened the Sarawak Adoption Ordinance.

(d) That the original name of the proposed second respondent was William Tan Wei Keong and it was illegally changed to Luk Tien Tien. That at the time the *ex parte* was made huge sums were being illegally withdrawn from the accounts of Mr. Luk and the proposed respondents could not account for it. This is the subject matter of another suit (22-6 of 2007).

(e) That Mr. Luk's signature had been forged to appoint the proposed third respondent as a director and that this was confirmed by Jabatan Kimia Malaysia.

[6] It is obvious that the dispute between the parties will ultimately give rise to many other suits for the determination of these and other issues. In this judgment, I shall only consider the issues that are relevant to encls. 11 and 62. The issues, to my mind, that are relevant are:

(a) Whether the proposed first respondent and her two children have *locus standi* to be served with the notice of the originating summons before the *ex parte* order was made and whether the *ex parte* order was invalid for that reason?

(b) Whether the *ex parte* order was irregular and should be set aside as there was no order under s. 5 of the Sarawak Mental Health Ordinance pursuant to an inquiry by a Magistrate?

(c) Whether the proposed respondents should be added as respondents for any other reason?

Whether Proposed Respondents Had *Locus Standi* To Be Served With Originating Summons?

[7] Counsel for all the proposed respondents conceded in their joint written submission that the applicant had lawfully married Mr. Luk in 1957 but alleged that she deserted him in 1976. In her affidavit in support, the proposed first respondent claimed that she is the third wife of the Mr. Luk as they had lived together for 20 years as husband and wife and had been accepted as such by relatives and friends. The applicant deposed that the proposed first respondent is merely the mistress of the Mr. Luk who had started an affair with him in 1993. She also deposed that the proposed first respondent's two children were fathered by someone else. The

question whether the proposed first respondent is the "third wife" of the Mr. Luk can be answered by reference to the Law Reform (Marriage and Divorce) Act 1976 and decided cases. The Act applies to all persons in Malaysia except Muslims and natives of Sabah and Sarawak or West Malaysian Aborigines whose marriages are governed by Native Customary Law or aboriginal custom. It is the case of the respondents themselves that the proposed first respondent had not contracted a marriage with Mr. Luk under the provisions of the Law Reform (Marriage and Divorce) Act 1976. One of the objects of the Law Reform (Marriage and Divorce) Act 1976 is to prevent polygamous marriages among non-Muslims (see s. 7). The other object is to provide for registration of marriages (see the Preamble to the Act). Since the coming into force of the Law Reform (Marriage and Divorce) Act 1976 in 1982, save for the exceptions provided in respect of natives of Sabah and Sarawak and West Malaysian Aborigines, a non-Muslim marriage may only be solemnised by a registrar appointed under the said Act (see ss. 3 and 9). Although the Act recognises all marriages entered into under custom or usage prior to 1st March 1982, it prohibits a non-Muslim from further contracting a marriage during the subsistence of the earlier marriage (ss. 4 and 5). Applying these provisions, in the case of *Yeoh v. Chew* [2001] 4 CLJ 631, Abdul Hamid Embong J (as he then was) held that a Chinese customary marriage performed in 1998 that was not registered in accordance with the provisions of the Law Reform (Marriage and Divorce) Act 1976 was not valid. In *Chia Kok Siong v. Chong Chee Chai & Anor* [2003] 3 CLJ 415, Abdul Wahab Patail J, said as follows in respect of a Chinese customary marriage that was solemnised in 1998:

> Marriages through custom or usage if unsupervised by an assistant registrar of marriages, are capable of abuse. Therefore, it is clear that the LRA does not intend the marriages that are not solemnised by the assistant registrar of marriages to be recognised as a valid marriage. It would liberalise the very abuse that the LRA seeks to control.

[8] However, in the case of *Leong Wee Shing v. Chai Siew Yin* [2000] 1 CLJ 439, Kamalanathan Ratnam J recognised a Chinese customary marriage that was solemnised after coming into force of the Law Reform (Marriage and Divorce) Act 1976. The decision was affirmed by the Court of Appeal in *Chai Siew Yin v. Leong Wee Shing* [2004] 1 CLJ 752. The High Court and Court of Appeal decisions in the above cited cases were apparently reversed by the Federal Court in an oral judgment. Reference was made to the

Federal Court decision by Azahar Mohamad JC (as he then was) in *Koh Lai Kiow v. Low Nam Hui* [2005] 3 CLJ 139 where the court had occasion to determine the legal status of children who were born out of an unregistered marriage. He said as follows:

> At this stage, I want to point out that the plaintiff alleged in her affidavit that she was married to the defendant on 12 April 1983 in Johore Bahru according to Chinese customary rites. I would assume for the purpose of this application that there was a customary marriage between the plaintiff and the defendant. It is not in dispute that the customary marriage has never been registered under the Law Reform (Marriage and Divorce) Act 1976. Learned counsel for the defendant has drawn to my attention the oral decision of the Federal Court given on 29 January 2004 in *Chai Siew Yin v. Leong Wee Shing* in Federal Court Civil Appeal No. 02-10-2003(W). In view of the decision of the Federal Court, to my mind there can be no doubt that the customary marriage between the plaintiff and the defendant is void and ought not to he recognized for non-registration. That is why, in my view, the legal consequences are that the two children who were born out of a relationship between the plaintiff and the defendant are the illegitimate children of them.

[9] I managed to obtain the said oral decision of the Federal Court (Mahkamah Persekutuan Rayuan Sivil No: 02-10-2003(W) and I reproduce the relevant portion below:

> Having heard the detailed arguments and having considered the relevant provisions of the Law Reform (Marriage and Divorce) Act 1976 and in the circumstances of this case, we are unanimous in our decision that this appeal be allowed with costs to be taxed.
>
> We are not in agreement with the reasoning of the judgments both in the High Court and the Court of Appeal.
>
> Section 34 of the said Act should not be read in isolation, but in harmony with the other provisions of the Act which encapsulate the overall intention of the Legislature in enacting the Act. To do otherwise would defeat the purpose and intention of the Act which was enacted to "provide for monogamous marriages and the solemnization and registration of such marriages".
>
> Deposit to be refunded to the Appellant.
>
> Signed.
> (Dato' Pajan Singh Gill)
> Judge of the Federal Court Malaysia
> Putrajaya
>
> Dated: 29th January, 2004

[10] Coming back to the facts of the instant case, it is common ground that Mr. Luk is not divorced from his first wife, the applicant. The proposed respondents only deposed that the applicant is separated from Mr. Luk. In respect of her status as a "wife", the proposed first respondent had not deposed any specific details of her purported marriage by custom or otherwise, including the date of marriage, in the affidavits. She only said that she have lived with him for 20 years and had been accepted as his wife by relatives and friends. Therefore no evidence was placed before the court that she was married by any custom or usage to Mr. Luk. Even if she had provided evidence of a customary marriage with Mr. Luk, in view of the provisions of the Law Reform (Marriage and Divorce) Act 1976 and authorities cited above, such a marriage is not valid. Therefore the assertion of the proposed 1st respondent that she is a "wife" of Mr. Luk is without any basis in law. The basis for her argument that she should have been served with notice of the Originating Summons is that she is a 'wife' of Mr. Luk. In view of my finding that she has no legal relationship with Mr. Luk, the argument that the *ex parte* order is irregular because it was not served on her is without merit.

[11] I will now consider the position of the children. The proposed second respondent in encl. 11 is her son. In the application it is stated that he is a minor. The object of the Sarawak Mental Health Ordinance is to provide for the "control and detention of person of unsound mind and of their property". The application under s. 11 is to get an order from the court to manage the properties and affairs of a person during the period he is incapable of doing so himself. This is the reason that the schedule provides for the appointment of a receiver of the properties of the person in question. It is quite obvious that the Sarawak Mental Health Ordinance did not have minors in its contemplation for this onerous duty. Therefore, the *ex parte* order is also not irregular by reason only that it was not served on the alleged infant son of Mr. Luk. In coming to this conclusion, I make no finding whether the proposed second respondent is the biological son of Mr. Luk or otherwise. In respect of proposed third respondent in encl. 62, she has alleged that she was legally adopted by Mr. Luk. The adoption is challenged by the applicant and it is the subject matter of another suit. In my opinion, it is not necessary for me to determine that question in this application. When the *ex parte* order was made in 2006, from the disputed affidavit evidence, the proposed third respondent had just turned 18 years old. In her summons in chambers to be added as a respondent, she has not claimed that she

should have been appointed to manage the properties and affairs of Mr. Luk. The main purpose of an application under s. 11 is to manage the properties and affairs of a person of unsound mind. In respect of her argument and that of the other proposed respondents that they have a legitimate expectation to be maintained by Mr. Luk, in my opinion, the question of maintenance is an ancillary matter contemplated in the Schedule. It does not mean that every person who expects to be maintained by the patient must make an application to manage the patient's properties and affairs in question under s. 11. It follows that the fact that the notice of the Originating Summons was not given to the proposed respondents did not render the *ex parte* order irregular or invalid.

Whether *Ex Parte* Order Is Irregular Or Invalid For Non Compliance With s. 5?

[12] The argument of counsel for the proposed respondents is that there should be an order made by a magistrate under s. 5 of the Sarawak Mental Health Ordinance before the High Court judge could make an order under s. 11 of the same Ordinance. Counsel for applicant submitted otherwise. Sections 3 and 4 of the Sarawak Mental Health Ordinance provide that a magistrate may order a person of unsound mind or believed to be of unsound mind to be apprehended and brought before him for further inquiry. The Magistrate may then exercise his power to order the detention of the said person under s. 5 which reads as follows:

> 5.(1) A Magistrate of the First Class shall, as soon as possible after the arrival at the approved hospital of the person alleged to be of unsound mind, hold an inquiry to determine his state of mind.
>
> (2) If the Magistrate is satisfied that after due inquiry, including considering medical evidence, that the person is of unsound mind and incapable of managing himself or his affairs, he may order that he be committed to the care and custody of a fit and proper person, or if there is no fit and proper person available that he be detained in an approved hospital.
>
> (3) If the Magistrate is satisfied that it is necessary in the interests of the person's health or safety, or for the protection of other persons or their property that such person should be detained in an approved hospital, he shall order him to be so detained.

[13] Section 10 of the Ordinance provides that if the magistrate is satisfied after due inquiry that detention of such a person is no longer warranted, he may order the person to be discharged.

[14] The impugned *ex parte* order in question was made under s. 11 which reads as follows: A

(1) The provisions of the Schedule shall apply to the management of the property and affairs of all patients.

(2) Where a Judge has reason to believe that a person may be B
incapable by reason of mental disorder of managing and administering his property and affairs, and the Judge is of opinion that it is necessary to make immediate provision for any of the matters referred to in paragraph 1 of the schedule, then pending the determination of the question whether that person is C
incapable as aforesaid, the Judge may exercise in relation to the property and affairs of that person any of the powers conferred on him in relation to the property and affairs of a patient by the Schedule so as is requisite for enabling that provision to be made.

(3) In this section and in the Schedule, "patient" means: D

(a) Any person against whom an order, which has been made or has been deemed to be made under section 5, or under section 227, 287, 291 or 295 of the Criminal Procedure Code, is in force;

and E

(b) any person who a Judge, after considering medical evidence, is satisfied is incapable, by reason of mental disorder, of managing his property and affairs.

[15] This section provides power to a High Court judge to make F
an interim order for the management of the property and affairs of a person of unsound mind in respect of the matters referred to in para. 1 of the schedule. Paragraph 1(1) of the schedule reads as follows:

1(1) A Judge may, with respect to the property and affairs of a patient, G
do or secure the doing of all such things as appear necessary or expedient:

(a) for the maintenance of other benefit of the patient;

(b) for the maintenance or other benefit of members of the H
patient's family;

(c) for making provision for other persons or purposes for whom or which the patient might be expected to provide if he were not mentally disordered; or

(d) otherwise for administering the patient's affairs. I

[16] The power of the judge includes the appointment of a receiver to carry out the purposes of para. 1. Counsel for the applicant and proposed respondents disagree on the construction to be placed on the word "patient" in s. 11. Sub-section (1) states that s. 11 shall apply to all "patients". Subsection (3) defines "patient" to mean a person against whom an order has been made under s. 5 or under 227, 287, 291 or 295 of the Criminal Procedure Code. It is common ground that no such order has been made against Mr. Luk. Counsel for proposed respondents submitted that section 11 cannot be invoked for that reason. Counsel for the applicant relied on sub-s. (3)(b) which also defines "patient" to mean any person whom a judge is satisfied, after considering medical evidence, that he is incapable of managing his properties and affairs. In this case, medical reports on the mental condition had been placed before the Judge who made the interim *ex parte* order under s. 11. It must be presumed that the judge had been satisfied on the mental condition of Mr. Luk when the order was made. Counsel for proposed respondents argued that sub-ss. 11(3)(a) and (b) should be read conjunctively which means that "patient" in s. 11 is a person against whom a previous order under s. 5 had been made and at the same time is also a person whom a High Court judge has determined is incapable of managing himself and his property. To support the argument, they relied on the word "and" between s. 11(3)(a) and (b). In my opinion, sub-ss. (a) and (b) merely provide for two categories of "patients" who come within the ambit of s. 11. Therefore a "patient" need not satisfy both conditions in (a) and (b) before an order can be made under s. 11. There is no doubt that "and" in ordinary use is conjunctive but depending on the context in which it is used, it can be disjunctive. *Maxwell On Interpretation of Statutes* states as follows:

> In ordinary usage 'and' is conjunctive and 'or' disjunctive. But to carry out the intention of the legislature it may be necessary to read 'and' in place of the conjunction 'or', and *vice versa*.

[17] I am fortified in my conclusion that sub-ss. (a) and (b) are disjunctive for the following reason. A conjunctive reading would render sub-s. (b) superfluous because ss. 3 and 4 provide elaborate procedures for the detention and holding of an enquiry by a magistrate of a person suspected of unsound mind. An order under s. 5 can only be made if the magistrate has considered the medical evidence after the said person has been held in detention in an approved hospital. Therefore it cannot be the intention of the

legislature that a High Court judge under sub-s. (3) need to reconsider the medical evidence and be satisfied the said person is of unsound mind. A disjunctive reading would make more sense as it would mean that sub-s. (3) has listed two categories of persons who are subject to s. 11, ie, a person in respect of whom a s. 5 order has been made and also a person whom the High Court judge thinks is incapable of managing his property or affairs. I shall therefore dismiss the application to set aside the *ex parte* order on the ground that it did not comply with s. 5 of the Sarawak Mental Health Ordinance.

Whether The Proposed Respondents Should Be Joined In The Originating Summons?

[18] Section 11 and the Schedule provide for temporary measures to safeguard the property and affairs of a person during the period that he is incapable. The Ordinance does not contain any provision for the permanent vesting of any property of the affected person in the receiver. Neither does it provide for distribution of assets under intestacy rules. Therefore the arguments that touch on the issue whether the proposed respondents are the legal heirs of Mr. Luk are not relevant at this stage. However, under para. 1 of the Schedule to the Ordinance, it has given the power to the High Court judge:

> (c) for making provision for other persons or purposes for whom or which the patient **might be expected to provide if he were not mentally disordered**; (emphasis added)

[19] These "other persons" are those not included in sub-para. (b) which refers to members of the patient's family. Whether the 2nd and 3rd proposed respondents are legal children of the Mr. Luk is a seriously contested issue. At least one suit in respect of that issue is pending before the court. However, what is not contested is that Mr. Luk had been providing for all the proposed respondents for many years. The applicant herself deposed in her affidavit that the proposed first respondent became the mistress of Mr. Luk since 1993. In the absence of any rebuttal evidence, the proposed respondents are persons for whom Mr. Luk might be expected to provide if he were not mentally disordered. Since no provision was made for them at the time the *ex parte* order was made, I shall allow them to be joined as respondents for the sole purpose of applying for maintenance under para. 1(c) of the Schedule.

[20] In summary, the orders that I make in encls. 11 and 62 are as follows:

(1) I dismiss the application to set aside the *ex parte* order made under s. 11 on 30 November 2006 which appointed the applicant as the interim receiver.

(2) I allow the application to add the proposed respondents to the originating summons for the sole purpose of applying for maintenance under para. 1(c) of the Schedule.

(3) That the proposed respondents be at liberty to apply for maintenance under para. 1(c) of the Schedule.

[21] I order each party to bear its own costs.